Office-Supreme Court, U.S.
FILED
MAY 8 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1586

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

EDWARD MALLEY AND THE STATE OF RHODE ISLAND,
Petitioners,

VS.

JAMES R. BRIGGS AND LOUISA BRIGGS,
Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The First Circuit

---

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

JOHN S. FOLEY, ESQUIRE
DECOF & GRIMM
One Smith Hill
Providence, RI 02903
(401) 272-1110

PRESS OF BYRON S. ADAMS, WASHINGTON, D.C. (202) 347-8203

QUESTION PRESENTED

Whether a police officer who charges a person with the commission of a crime and who requests that a judge issue a warrant for the arrest of that person, all under facts which provide no reasonable grounds for concluding that probable cause exists, is nevertheless immunized from liability under 42 U.S.C. §1983 if the judge issues the requested warrant.

TABLE OF CONTENTS

	Pages
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	2
REASONS FOR DENYING THE WRIT	4
I. The Court of Appeals correctly applied settled principles of good faith immunity to the facts of this case	4
II. There is no present conflict among the circuits regarding the immunity of police officers whose defective warrant applications are approved by magistrates	8
CONCLUSION	11

TABLE OF AUTHORITIES

	Pages
Ames v. United States, 600 F.2d 183 (8th Cir. 1979) ...	9
Briggs v. Malley, 748 F.2d 715 (1st Cir. 1984)	4, 7, 9
Butz v. Economou, 438 U.S. 478 (1978)	7
Fullman v. Graddick, 739 F.2d 553 (11th Cir. 1984) ...	7, 9
Garris v. Rowland, 678 F.2d 1264 (5th Cir.), *cert. denied sub nom. Ft. Worth v. Garris*, 459 U.S. 864 (1982)	9
Harlow v. Fitzgerald, 457 U.S. 800 (1982)	4, 5, 8, 9
McSurely v. McClellan, 697 F.2d 309 (D.C. Cir. 1982) .	8, 9
Monroe v. Pape, 365 U.S. 167 (1961)	10
Rodriguez v. Ritchey, 556 F.2d 1185 (5th Cir. 1977), *cert. denied*, 434 U.S. 1047 (1978)	9
United States v. Leon, ____ U.S. ____, 104 S.Ct. 3405 (1984)	4, 5, 8, 9

In The

Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-1586

EDWARD MALLY AND
THE STATE OF RHODE ISLAND,

Petitioners,

VS.

JAMES R. BRIGGS AND LOUISA BRIGGS,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court
Of Appeals For The First Circuit**

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Respondents James R. Briggs and Louisa Briggs submit that the Petition for Writ of Certiorari should be denied. Respondents concur in petitioner's statements under the headings OPINIONS BELOW, JURISDICTIONAL GROUNDS, and CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED in the Petition. The Appendix to the petition (hereinafter "Pet. App.") is incorporated herein by reference.

STATEMENT OF THE CASE

Respondents James Briggs and Louisa Briggs are husband and wife. They are long-time residents of the Town of Narragansett, Rhode Island, having lived there for over thirty years. Mr. Briggs is a real estate developer and has served eight years as the elected tax assessor of Narragansett. He has been active in community affairs as well, having served as the chairman for the heart fund and muscular dystrophy drives and as the president of the Narragansett Chamber of Commerce. Both Mr. and Mrs. Briggs enjoyed a good reputation in the community and neither has ever had any involvement with illegal drugs.

On December 20, 1980, Rhode Island State Police intercepted a telephone call on a court-authorized wiretap in connection with a narcotics investigation of one Paul Driscoll, who was a friend of respondents' daughter. The call was overheard by Joseph Miranda of the Rhode Island State Police, who noted the substance of the conversation on a call log sheet. The call log sheet states that the caller identified himself as "Dr. Shogun" and that there was a general conversation about a party the preceding night. In the words of officer Miranda, "caller says I can't believe I was token [sic] in front of Jimmy Briggs—caller states he passed it to Louisa—caller and Paul talk about another party going down tonight—Paul says Nancy was sitting in his lap rolling her thing . . . ."

The investigation of Paul Driscoll was being directed by petitioner Edward Malley. Malley was not present when the call from "Dr. Shogun" was intercepted, but discussed the call shortly after with detective Ronald Youngsma, who was working with Malley on the investigation. They determined that the call was in fact an incriminating call because "token" is drug parlance for smoking marijuana and because the

phrase "rolling her thing" meant rolling a marijuana cigarette.

Solely on the basis of the conversation of December 19, 1980, Malley concluded that James and Louisa Briggs had committed the crime of conspiracy to possess marijuana with intent to deliver. Malley then prepared an Affidavit and Arrest Warrant form and a District Court Felony Complaint form for Mr. and Mrs. Briggs. The printed form of the Affidavit and Arrest Warrant for James Briggs stated that "Your affiant upon oath states that he has reason to believe and does believe that grounds for issuance of an arrest warrant exists and states the following facts on which such belief is founded." Malley then typed an affidavit in which he described the substance of the December 20 call as recorded by officer Miranda and his understanding of the meaning of the drug terminology used. He concluded the affidavit with the statement, "Therefore, your affiant requests that an arrest warrant be issued for James R. Briggs, alias John Doe . . . " A similar form was completed for Louisa Briggs. Malley signed each form as "affiant."

The District Court Felony Complaint forms listed the Rhode Island State Police as "complainant." The printed portion of the form stated, " . . . The here named complainant on oath, in the name and behalf of the State, says that the here named defendant . . . on the date stated with force and arms acted in violation of law and wherefore the complainant prays that a summons or arrest warrant may issue . . . " Malley then typed in the specific charges against Mr. and Mrs. Briggs and signed the complaint as "authorized officer."

After preparing the affidavits and court forms, Malley then appeared before a judge of the Rhode Island District Court, on February 25, 1981, who issued arrest warrants

for Mr. and Mrs. Briggs, as well as twenty other individuals. Respondents were arrested in their home in the early morning hours of March 19, 1981 and held at a State Police barracks until that afternoon when they were arraigned and released from custody. The grand jury which considered the charges against Mr. and Mrs. Briggs returned no true bill.

Respondents concur with petitioner's statement as to the procedural history of this case.

REASONS FOR DENYING THE WRIT

The petition should be denied because the Court of Appeals correctly applied the principles announced in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982) and *United States v. Leon*, ___ U.S. ___, 104 S.Ct. 3405 (1984) to conclude that a police officer who applies for and obtains an arrest warrant on the basis of facts which no reasonable officer could believe provided probable cause may be liable for damages under 42 U.S.C. §1983. The petition also should be denied because there is no conflict among the circuits over the applicability of the principles of *Harlow* and *Leon* to an arrest-pursuant-to-warrant case under §1983. Since the principles announced in *Harlow* and *Leon* have settled the question presented for review, review by this Court is unnecessary.

I. The Court of Appeals correctly applied settled principles of good faith immunity to the facts of this case.

In reversing the trial judge's grant of a directed verdict in favor of petitioner Malley, the Court of Appeals applied the good faith immunity principles announced by this Court in *Harlow v. Fitzgerald*, 457 U.S. 800 (1982). The Court of Appeals held "that *only* where an officer is 'constitutionally negligent', that is, where the officer should have known that the facts recited in the affidavit did not constitute probable cause, will liability attach." *Briggs v. Malley*, 748 F.2d 715, 721 (1st Cir. 1984) (emphasis in original) (Pet. App. 16). This

is a straight-forward and correct application of this Court's pronouncement "that government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. at 818. There is nothing remarkable or objectionable about this analysis that would warrant review by this Court.

The Court of Appeals correctly found further support for its holding from *United States v. Leon*, ___ U.S. ___, 104 S.Ct. 3405 (1984).[1] There, this Court established a good-faith exception to the exclusionary rule and cited *Harlow* for the proposition that a police officer must act in an objectively reasonable manner in relying on a magistrate's finding of probable cause in order to invoke the good faith exception. *United States v. Leon*, ___ U.S. at ___, 104 S.Ct. at 3421. Mr. Justice Stevens, dissenting, noted the majority's recognition of the equivalence between the availability of a good faith exception to the exclusionary rule and a good faith immunity from civil damage suits. *Id.*, ___ U.S. at ___, n. 35, 104 S.Ct. 3456 n. 35. Thus, *Leon* recognizes the applicability of *Harlow's* immunity principles to damages suits arising out of arrests pursuant to warrants. *Leon's* instruction in this regard was noted by the Court of Appeals below and the *Harlow* immunity principles were correctly applied.

Petitioner's contention that *Harlow* was incorrectly applied below, as well as his argument that the holding below conflicts with the traditional division of functions between

---

[1]Petitioner fails to recognize the importance of *United States v. Leon*, citing it only for the proposition that an officer who misleads a magistrate or displays a reckless disregard for the truth may face civil liability (Petition at 12, n.5).

police and magistrates, are premised on a mischaracterization of the facts. Petitioner repeatedly characterizes his conduct as a disinterested presentation of evidence to a judge, who bore complete responsibility for the evaluation of probable cause and the issuance of the warrant. As seen from the documents he prepared, however, petitioner did not simply gather evidence and present it to a magistrate for a determination of probable cause. Rather, at the close of his investigation he concluded that respondents had committed a crime, signed a felony complaint against them, and requested that the magistrate issue a warrant for their arrest. He actively sought the arrest of respondents; his actions were purposeful and accusatory, not dispassionate or indifferent. Thus, it is not the mere presentation of evidence to a magistrate which is constitutionally offensive here. It is petitioner's conclusion that respondents had committed a crime and his active role in initiating charges against them and seeking their arrest, when probable cause was entirely lacking, which is actionable. Under the facts of this case,[2] *Harlow* was correctly applied below.

Neither did the decision below alter in any way the traditional division between police and magisterial functions. Nothing in the opinion below suggests that police officers need no longer apply to judges or magistrates for warrants in appropriate cases. The opinion below stands only for the proposition that a police officer may be liable in damages if he applies for and obtains an arrest warrant under circumstances where no reasonable police officer would conclude that probable cause exists. He will not be insulated from

---

[2]To the extent that a decision by this Court will turn on the particular facts of the case regarding the statements made by Malley in signing the complaint and warrant forms, the decision will lack any broad application and review by writ of certiorari would be particularly inappropriate.

liability simply because the magistrate joins in the error by issuing the warrant requested by the officer.

Contrary to petitioner's assertion, the ruling below does not transfer the magistrate's duties to the police officer. What the holding does is require the police officer to act in an objectively reasonable fashion by not instituting criminal charges or applying for an arrest warrant unless there is a factual basis for doing so. While this rule may require a police officer to be more diligent, and may result in fewer arrests without probable cause, it will not transfer or lessen the duty of the magistrate or judge to carefully screen warrant applications. Rather than confusing the functional division between police and magistrates, the holding below simply provides a disincentive for the police to be lax in their duty not to initiate criminal proceedings and seek arrest warrants in the absence of probable cause.

Petitioner also incorrectly argues that the "grey area" where immunity will apply, *Briggs v. Malley*, 748 F.2d at 721 (Pet. App. 16), is an illusion. The "grey area" referred to by the Court of Appeals is simply those situations where reasonable minds could disagree as to whether probable cause existed. Under *Harlow*, if an officer brings criminal charges and requests issuance of a warrant under facts which could reasonably be believed to constitute probable cause, he will be immune from liability. Only unreasonable conduct will be actionable. While the civil trier of fact[3] in an action under 42 U.S.C. §1983 will have the final say on whether the officer's conduct was objectively reasonable, the careful preparation

---

[3]The Court of Appeals' analysis lends itself to summary disposition of groundless civil rights actions. *See Butz v. Economou*, 438 U.S. 478, 507-508 (1978). Where the facts indisputably show that reasonable minds could conclude that probable cause existed, the officer's objectively reasonable conduct will entitle him to summary judgment. *See Fullman v. Graddick*, 739 F.2d 553, 561 (11th Cir. 1984).

of affidavits by police, with attention to Fourth Amendment standards, will virtually guarantee good faith immunity.

II. There is no present conflict among the circuits regarding the immunity of police officers whose defective warrant applications are approved by magistrates.

Petitioner has cited seven decisions, from four Circuit Courts of Appeals, in support of his argument that the decision below conflicts with the so-called "chain-of-causation" principles discussed in those cases. All of the cases cited, however, predate *United States v. Leon* and all but one of the cases[4] predate *Harlow v. Fitzgerald*. Since *Harlow* and *Leon* have provided clear instruction to the Courts of Appeals on the question presented for review by the instant petition, and because the decisions of the Courts of Appeals which post-date *Harlow* and *Leon* are consistent, no conflict warranting review by this Court presently exists.

In *Leon*, this Court stated that "our good-faith inquiry is confined to the objectively ascertainable question whether a reasonably well-trained officer would have known that the search was illegal *despite the magistrate's authorization.*" *United States v. Leon*, ___ U.S. at ___, n. 23, 104 S.Ct. at 3421, n. 23 (emphasis added). Thus, the judicial issuance of the warrant is not dispositive on the question of the good-faith exception to the exclusionary rule. Given the parallel recognized by this Court between the *Leon* inquiry and the *Harlow* immunity standard, it is clear from *Leon* that there can be no hard and fast rule insulating a police officer from liability whenever a judge approves a warrant application, no matter how unreasonable the officer's conduct. Therefore, *Leon* has put to rest the illogical chain of causation

---

[4]*McSurely v. McClellan*, 697 F.2d 309 (D.C. Cir. 1982).

doctrine and resolved the pre-existing conflict[5] in the Circuits regarding this doctrine.

Since *Leon*, the Courts of Appeals which have considered police liability for arrests pursuant to warrants have rejected or ignored the chain of causation doctrine and have instead applied the principles of *Harlow* and *Leon*. Both the court below and the Fourth Circuit in *Fullman v. Graddick*, 739 F.2d 553 (11th Cir. 1984) found *Leon* applicable to §1983 actions for damages alleging an arrest based on a warrant issued without probable cause. The court below ruled that the district court's grant of a directed verdict was improper, whereas the Eleventh Circuit in *Fullman* held, with respect to one defendant, that summary judgment for that defendant was proper, citing *Leon*, since "the warrants were facially valid, and the uncontroverted facts show that the arrest warrant was executed in good faith and with probable cause." *Id.* at 561. The chain of causation doctrine was not mentioned in *Fullman* and was rejected by the court below.[6]

---

[5]The scope and applicability of the doctrine is open to serious question, even in the Circuit which created it. In *Rodriguez v. Ritchey*, 556 F.2d 1185 (5th Cir. 1977) (*en banc*), *cert. denied*, 434 U.S. 1047 (1978), the doctrine was fully accepted by only the five-judge plurality; the two judges who concurred in the result and the six dissenters rejected the doctrine in whole or in part. Moreover, in the cases the doctrine is usually *dictum*, being mentioned in passing as a further reason supporting a result already reached. *See McSurely v. McClellan*, 697 F.2d at 323-24; *Garris v. Rowland*, 678 F.2d 1264, 1273 n. 6 (5th Cir.), *cert. denied sub nom. Ft. Worth v. Garris*, 459 U.S. 864 (1982); *Ames v. United States*, 600 F.2d 183 (8th Cir. 1979).

[6]The First Circuit correctly noted that as a principle of causation the doctrine could not withstand analysis because it contradicts the settled tort notion of "but for" cause. 748 F.2d at 721 (Pet. App. 15-16). This rejection of the chain of causation doctrine is consistent with this court's often-cited declaration that §1983 "should be read

Since it is the post-*Harlow* and *Leon* landscape which should be surveyed to determine whether there is a conflict among the circuits, and since the two post-*Harlow* and *Leon* decisions in this area are consistent, no conflict presently exists warranting review by this Court.

CONCLUSION

Because the Court of Appeals correctly based its decision on the principles announced in *Harlow* and *Leon* and because there is uniformity, not conflict, in the courts of appeals which have applied *Harlow* and *Leon* to arrest warrant damages cases, this Court should decline to review the decision of the Court of Appeals.

Respectfully submitted,

JOHN S. FOLEY
DECOF & GRIMM
One Smith Hill
Providence, RI 02903
(401) 272-1110

---

against the background of tort liability that makes a man responsible for the natural consequences of his actions." *Monroe v. Pape*, 365 U.S. 167, 187 (1961).